

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the Real
Estate License of Joel Barrick - Collections

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Jeanne M. Cochran on August 7, 2013.

Joan Tujetsch, Staff Attorney, appeared on behalf of the Minnesota Department of Revenue (Department). There was no appearance by, or on behalf of, Respondent Joel A. Barrick (Respondent).

On August 22, 2013, the Administrative Law Judge received a motion from the Department requesting that default judgment be entered pursuant to Minn. R. 1400.6000 because there was no appearance by Respondent at the prehearing conference. Respondent did not file a response to the Department's motion. Following the 10 business day response period provided by rule, the hearing record closed on September 6, 2013.

STATEMENT OF THE ISSUES

1. Whether Minn. Stat. § 270C.72, subd. 1, states a trade or professional license must be revoked if the commissioner of revenue notifies the licensing authority "that the applicant owes the state delinquent taxes payable to the commissioner, penalties, or interest." The applicant taxpayer must owe \$500 or more in delinquent taxes, penalties or interest.

2. Whether Minn. Stat. § 270C.72, subd. 2(b), defines "applicant" as "an officer of a corporation, a member of a partnership, or an individual who is liable for delinquent taxes, either for the entity for which the license is at issue or for another entity for which the liability was incurred, or personally as a licensee."

3. Whether Respondent is an "applicant" who owes the State of Minnesota \$500.00 or more in delinquent taxes, penalties, and/or interest and is thus subject to revocation of his real estate salesperson's license pursuant to Minn. Stat. § 270C.72.

SUMMARY OF RECOMMENDATION

Because the Respondent was aware of the date and purpose of the prehearing conference, and declined to either attend the conference or request a continuance, he is in default. Following this default, application of a regulatory sanction is appropriate.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 3, 2013, a Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing) in this matter was mailed to Respondent at his last known address.¹

2. The Notice and Order for Hearing indicated that a prehearing conference would be held in this matter on August 7, 2013, at 3:30 p.m., via teleconference.²

3. The Notice and Order for Hearing requires that any party intending to “participate as a party in this proceeding must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.³

4. The Notice and Order for Hearing in this matter also includes the following statements:

Respondent's failure to appear at the hearing or any prehearing conference, may result in a finding that the Respondent is in default, that the Department of Revenue's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

5. If any party has good cause for requesting a delay of the prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference or hearing. A copy of the request must be served on the other party.⁴

6. Respondent did not file a Notice of Appearance with the undersigned.

7. No one appeared at the August 7, 2013, prehearing conference on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent, prior to the August 7, 2013, pre-hearing conference.

8. The Notice and Order for Hearing alleges that:

¹ See Affidavit of Dawn Hyland dated July 3, 2013.

² Notice and Order for Hearing and Prehearing Conference at 1.

³ *Id.* at 3.

⁴ *Id.* at 3.

- (a) Respondent, Joel Barrick, holds real estate salesperson license number 40169885, issued by the Minnesota Department of Commerce pursuant to Minn. Stat. ch 82.
- (b) Respondent Joel Barrick has not paid all sales tax due to the State of Minnesota for the tax periods endings December 31, 2006 and September 30, 2008. As of July 1, 2013, the total amount Respondent owed for sales tax, penalty and interest is \$59,164.60 with interest and penalty continuing to accrue where appropriate.
- (c) The sales tax debt is a personal liability assessment based on a tax owed by Minnesota Home Zone, Inc., a business formerly owned by Respondent.
- (d) By letter dated May 9, 2013, the Minnesota Department of Revenue notified Respondent of the Department's intent to require revocation of his real estate salesperson's license pursuant to Minn. Stat. § 270C.72.
- (e) Respondent requested a contested case hearing as permitted by Minn. Stat. § 270C.72 in a letter received by the Minnesota Department of Revenue on June 3, 2013.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Revenue and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 270C.722.
2. The Respondent received timely and proper notice of the Prehearing Conference in this matter when the Minnesota Department of Revenue sent the Notice and Order for Hearing and Prehearing Conference to his last known address.
3. The Minnesota Department of Revenue has complied with all relevant procedural requirements of statute and rule.
4. Pursuant to Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.
5. Pursuant to Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.
6. The Department has established grounds for revocation of Respondent's real estate salesperson's license pursuant to Minn. Stat. § 270C.72.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner take disciplinary action against the real estate license of Joel A. Barrick.

Dated: October 14, 2013

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.